

## **TITLE XVII**

### **SMALL TAX CASES**

#### **RULE 170. GENERAL**

The Rules of this Title XVII, referred to herein as the "Small Tax Case Rules," set forth the special provisions which are to be applied to small tax cases as defined in Rule 171. See Code Section 7463 (Appendix II). Except as otherwise provided in these Small Tax Case Rules, the other rules of practice of the Court are applicable to such cases.

## **RULE 171. SMALL TAX CASE DEFINED<sup>1</sup>**

The term "small tax case" means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds

(1) \$10,000 for any one taxable year in the case of income taxes,

(2) \$10,000 in the case of estate taxes,

(3) \$10,000 for any one calendar year in the case of gift taxes, or

(4) \$10,000 for any one taxable period or, if there is no taxable period, for any taxable event in the case of excises under Code Chapter 41, 42, 43, or 44 (taxes on certain organizations and persons dealing with them) or under Code Chapter 45 (windfall profit tax);

(b) The petitioner has made a request in accordance with Rule 172 to have the proceedings conducted under Code Section 7463; and

(c) The Court has not issued an order in accordance with Rule 172(c) or Rule 173, discontinuing the proceedings in the case under Code Section 7463.

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<sup>1</sup>The amendment is effective as of August 1, 1998.

## **RULE 172. ELECTION OF SMALL TAX CASE PROCEDURE<sup>1</sup>**

With respect to classification of a case as a small tax case under Code Section 7463, the following shall apply:

(a) A petitioner who wishes to have the proceeding in the case conducted under Code Section 7463 may so request at the time the petition is filed. See Rule 175.

(b) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted under Code Section 7463.

(c) If such request is made in accordance with the provisions of this Rule 172, then the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted under the Small Tax Case Rules. If no such order is issued, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7463, at the commencement of the trial.

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<sup>1</sup>The amendments are effective as of August 1, 1998.

### **RULE 173. DISCONTINUANCE OF PROCEEDINGS**

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the Rules of Practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed \$10,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.



#### **RULE 174. REPRESENTATION**

A petitioner in a small tax case may appear without representation or may be represented by any person admitted to practice before the Court. As to representation, see Rule 24.

## **RULE 175. PLEADINGS**

**(a) Petition:** (1) *Form and Content:* The petition in a small tax case shall be substantially in accordance with Form 2 shown in Appendix I, or shall, in the alternative, comply with the requirements of Rule 34(b), and contain additionally (A) the location of the office of the Internal Revenue Service which issued the deficiency notice, (B) the taxpayer identification number (e.g., social security number) of each petitioner, and (C) a request that the proceedings be conducted under Code Section 7463.

(2) *Filing Fee:* The fee for filing a petition shall be \$60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information the inability to make such payment.

(3) *Verification Not Required:* The petition need not be verified, unless the Court directs otherwise.

**(b) Answer:** No answer is required to be filed in a small tax case, except where there is an issue on which the Commissioner bears the burden of proof or where the Court otherwise directs. Where an answer is filed, the provisions of Rule 36 shall apply. In a case where no answer is filed, the allegations of error and facts relating thereto set forth in the petition shall be deemed denied.

**(c) Reply:** A reply to the answer shall not be filed unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the affirmative allegations of the answer will be deemed denied.

## **RULE 176. PRELIMINARY HEARINGS**

If, in a small tax case, it becomes necessary to hold a hearing on a motion or other preliminary matter, the parties may submit their views in writing and may, but shall not ordinarily be required to, appear personally at such hearing. However, if the Court deems it advisable for the petitioner or the petitioner's counsel to appear personally, the Court will so notify the petitioner or the petitioner's counsel and will make every effort to schedule such a hearing at a place convenient to them.

## **RULE 177. TRIAL**

<sup>1</sup>**(a) Place of Trial:** At the time of filing the petition, the petitioner may, in accordance with Form 5 in Appendix I or by other separate writing, designate the place where the petitioner would prefer the trial to be held. If the petitioner has not filed such a designation, then the Commissioner shall, within 30 days after the date of service of the petition, file a designation showing the place of trial preferred by the Commissioner. The Court will make every effort to conduct the trial at the location most convenient to that designated where suitable facilities are available.

**(b) Conduct of Trial and Evidence:** Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

**(c) Briefs:** Neither briefs nor oral arguments will be required in small tax cases, but the Court on its own motion or upon request of either party may permit the filing of briefs or memorandum briefs.

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<sup>1</sup>The amendment is effective as of August 1, 1998.



## **RULE 178. TRANSCRIPTS OF PROCEEDINGS<sup>1</sup>**

The hearing in, or trial of, a small tax case shall be recorded or otherwise reported but a transcript thereof need not be made unless the Court otherwise directs.

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<sup>1</sup>The amendment is effective as of August 1, 1998.

### **RULE 179. NUMBER OF COPIES OF PAPERS**

Only an original and two conformed copies of any paper need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.